Supreme Court, U.S.
FILED

05-383 JUL 21 2005

OFFICE OF THE CLERK

No. ___

In The Supreme Court of the United States

ABE SKINNER, AS COLLIER COUNTY (FL) PROPERTY APPRAISER,
Petitioner,

v.

MICRO DECISIONS, INC. A FLORIDA CORPORATION,
Respondent.

Petition for a Writ of Certiorari to the Florida Supreme Court

PETITION FOR A WRIT OF CERTIORARI

GAYLORD A. WOOD, JR.*
B. JORDAN STUART,
WOOD & STUART, PA
206 Flagler Avenue
New Smyrna Beach, FL 32169
(386) 424-9908

July 21, 2005

**Counsel of Record*

QUESTION PRESENTED

Whether a state court has jurisdiction to decide whether a person who has a copyright registration issued by the United States Copyright Office is entitled to the protection afforded by that copyright.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Florida Supreme Court.

The Petitioner here and Appellant below is Abe Skinner, as Collier County (FL) Property Appraiser.

The Appellee below and Respondent here is MicroDecisions, Inc., a Florida real estate information provider.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

A. Factual Background 2

B. Proceedings Below 3

REASONS FOR GRANTING THE PETITION 4

I. THIS CASE RAISES THE CRITICALLY IMPORTANT QUESTION OF WHETHER A STATE COURT CAN DECIDE WHO IS ENTITLED TO HOLD A COPYRIGHT. 5

A. The Second District Court of Appeal Misconstrued the Significance of the United States District Court's Order on Remand. 6

B The Second District Court of Appeal Misconstrued the Law Controlling Jurisdiction of this Case. 8

C. The Second District Incorrectly Determined that Florida's Public Records Law Abrogates the Copyright Act 12

II. THE SECOND DISTRICT'S DECISION, AND THE FLORIDA SUPREME COURT'S REFUSAL TO REVIEW THE CASE RESULTS IN CONFLICT BETWEEN A FLORIDA STATE COURTS AND THE SECOND CIRCUIT COURT OF APPEALS OVER THE VERY SAME ISSUE. 18

CONCLUSION 24

TABLE OF AUTHORITIES

Cases

Association of American Medical Colleges v. Carey, 728 F.Supp. 873 (N.D.N.Y. 1990) 17, 18

Bldg. Officials & Code Adm'rs v. Code Tech, Inc, 628 F.2d 730, 735-36 (1st Cir. 1980) 5, 13

County of Suffolk, N.Y. v. First American Real Estate Solutions, 261 F.3d 179 (2d Cir.2001) 5

Department of Health & Rehabilitative Services v. Southpointe Pharmacy, 636 So. 2d 1377 (Fla. 1st DCA 1994) 11

Ehat v. Tanner, 780 F.2d 876, 878 (10th Cir. 1985) 17
First American, 261 F.3d at 188-189 8

Foley v. Luster, 249 F.3d 1281, 1287 (11th Cir. 2001) . 14, 17

Garrido v. Burger King Corp., 558 So. 2d 79, 82 (Fla. 3rd DCA 1990) 10

Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed.2d 581 (1991) 16

Jones v. Ruth Packing Co., 430 U.S. 519, 525, 97 S.Ct. 1305, 1309, 51 L.Ed.2d 604 (1977) 15

Mazer v. Orange County, 811 So. 2d 857, 859 (Fla. 5th DCA 2002) 10

MicroDecisions v. Skinner, No. 2:02-cv-639-FTM-29DNF (M.D. Fla. Feb. 5, 2003) 7

MicroDecisions, Inc. v. Skinner, 889 So. 2d 871, 874 (Fla. 2nd DCA 2004) 4, 6, 10, 12, 13

Orson, Inc. v. Miramax Film Corp., 189 F.3d 377 (3d Cir. 1999) 17

Pincus v. Carlisle, 585 So. 2d 1172 (Fla. 4th DCA 1991) .. 10

Richard Feiner & Co. v. H.R. Industries, Inc., 10 F.Supp. 2d, 310 (S.D.N.Y. 1998) 17

Roth v. Pritkin, 710 F.2d 934, 938 (2d Cir. 1983), cert. denied, 464 U.S. 961, 104 S.Ct. 394, 78 L.Ed.2d 337 (1983) 17

Schachel v. Closet Concepts, Inc., 405 So. 2d 487, 488 (Fla. 3rd DCA 1981) 11

Sears, Roebuck and Co. v. Stiffel Company, 376 U.S. 225, 84 S.Ct. 784 (1964) 14

Sola Elec. Co. v. Jefferson Elec. Co., 317 U.S. 172, 173, 176, 63 S.Ct. 172, 173, 87 L.Ed. 165 (1942) 15

Sparta Surf, Inc. v. Korda, 599 So. 2d 242, 243 (Fla. 4th DCA 1992) 11

State of Wisconsin v. Law Office Information Systems, Inc., 230 Wis. 2d 185, 603 N.W. 2d 748, 1999 Copr.L.Dec. P 27, 947, 1999 WL 649235, page 4 (Wis. App. Table 19999

Statutes

17 U.S.C. § 101, *et seq.* 1

17 U.S.C. §301 18

17 U.S.C. 201(a) 12

28 U.S.C. § 1337 1

28 U.S.C. § 1338 ..... 1, 5

28 U.S.C. § 1338(a) 6

section 119.07, Florida Statutes 1, 12

Title 17 United States Code, section 301(a) 6

OPINIONS BELOW

The Florida Supreme Court decision to deny review is reported without opinion at 902 So. 2d 791 (Fla. April 22, 2005), and the Order denying review is reprinted in the Appendix to the Petition ("Pet. App.") at 2a. The Opinion of the Second District Court of Appeal, State of Florida, is reported at 889 So. 2d 871 (Fla. 2nd DCA 2004), and is reprinted at Pet. App. 9a-.

JURISDICTION

The Florida Supreme Court entered its judgment on April 22, 2005. This Court has jurisdiction under 28 U.S.C. § 1257.

STATUTES INVOLVED

This case involves provisions of the Copyright Act, 17 U.S.C. § 101, *et seq.*, 28 U.S.C. § 1338, and section 119.07, Florida Statutes.

STATEMENT OF THE CASE

This case represents an important turning point in the nature of copyright litigation in the United States. Resolution of the issues presented in this case will determine the continued significance of both the Copyright Act and 28 U.S.C. § 1338. Florida's Second District Court of Appeal has extended state court jurisdiction to a question which has always been within the exclusive province of the Federal courts: who may claim entitlement to copyright protection?

Petitioner Abe Skinner, as Collier County (FL) Property Appraiser, produces tax maps by use of a computerized Geographic Information System ("GIS") which allows users to graphically display information about properties in Collier County, Florida. He produces this data at great expense to county taxpayers. To protect the investment in the GIS data, he applied for and received a

Certificate of Registration from the United States Copyright Office, Number Vau598-175, effective September 03, 2002. In addition to posting the maps on his office website for anyone to view for free, Petitioner completely complied with Florida's Public Records Laws by providing one copy of the GIS tax map source code to anyone requesting it, upon payment of the actual cost of reproduction, along with a personal use license that allowed the recipient of the code to do anything with it except use it for commercial purposes.

Respondent, MicroDecisions, Inc., is a Florida for-profit corporation that provides real estate information to subscribers. MicroDecisions represents a new breed of entrepreneur that requests public records direct from government computers, and then resells those records at great expense to subscribers who could otherwise access the same records for free on Petitioner's web site, or for the cost of reproduction directly from the Petitioner.

A. Factual Background

Respondent requested copies of the GIS tax map source code from Petitioner. Petitioner replied that his office provides a license agreement with copies of GIS tax maps that permits personal use of the records, and provides a commercial use license that allows transfer and sale of the maps, and quoted the prices of the data both for the personal use and commercial use licenses.

Prior to receipt of any payment, and prior to being served with the Complaint in the Circuit Court, Petitioner sent a CD-ROM containing the GIS tax map files to Plaintiff, with an invoice for the actual cost of reproduction. Respondent paid the invoice.

B. Proceedings Below

Under the guise of seeking copies of public records (which Respondent already possessed), Respondent served its Complaint in the Circuit Court of the Twentieth Circuit of Florida, seeking an alternative writ of mandamus compelling Petitioner to provide the source code free from copyright restrictions. Respondent claimed that the copyright registration effectively denied it access to the public records already in its possession, because it did not want to be subject to a personal use license.

Petitioner served his Answer and Defenses, asserting that the case was moot because Respondent was furnished with the GIS tax map files (prior to the payment of the fee prescribed by law), that Respondent had unclean hands because it failed to submit the fee for the actual cost of reproducing the records, that the circuit court lacked subject matter jurisdiction because what Respondent sought was really a determination of who may claim entitlement to a copyright, and failure to state a cause of action.

Petitioner removed the case to the U.S. District Court asserting that the predominant issue in the action is a matter within the exclusive jurisdiction of the federal courts, arising under an Act of Congress relating to copyrights. Respondent moved to remand the case to the circuit. The District Court granted the Motion to Remand, noting that the Complaint filed in the circuit court alleged that the documents are public records to which the Property Appraiser must allow access, that the claim as alleged in the Complaint did not arise from federal law or the Copyright Act, and was therefore not completely preempted by federal law. A copy of the Order is included in the Appendix hereto at Pet.App. 4a.

It is important to note that the District Court based its decision to remand the case upon the four corners of the Complaint, and not upon the various affidavits and

memorandae supporting each side's Motion for Summary Judgment filed once the case was remanded to state court. The Second District Court of Appeal misconstrued this distinction.

The circuit court determined that Respondent's claim of denial of access to public records was moot because Petitioner had already furnished the requested records, and that it lacked jurisdiction to determine whether Petitioner may properly claim copyright protection for works in his office, because that is a question of federal law.

Respondent timely appealed the circuit court's decision to Florida's Second District Court of Appeal, a state court of intermediate jurisdiction. The Second District reversed the trial court, holding that Petitioner "has no authority to assert copyright protection in the GIS maps, which are public records." *MicroDecisions, Inc. v. Skinner*, 889 So. 2d 871, 874 (Fla. 2nd DCA 2004).

REASONS FOR GRANTING THE PETITION

This case presents an important jurisdictional issue, because it represents the first time that a state court has ignored 28 U.S.C. § 1338 to determine for itself that someone was improvidently granted a Certificate of Registration from the U.S. Copyright Office and that a public official of the State of Florida may not lawfully hold a copyright. Entitlement of public bodies to copyright protection may be dictated by state law, as suggested in *Bldg. Officials & Code Adm'rs v. Code Tech, Inc*, 628 F.2d 730, 735-36 (1st Cir. 1980), but the application of such law has heretofore been made exclusively by federal courts, pursuant to 28 U.S.C. § 1338.

The Second District Court of Appeal also notes the conflict between its decision and a decision of the Second